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THE BOARD OF TRADE OF METROPOLITAN TORONTO

September 23, 1966.

The Honourable Mr. Justice George A. McGillivray,
Commissioner,
The Royal Commission on The Workmen's
Compensation Act,
Box 202, Parliament Buildings,
Toronto (2), Ontario.

Dear Mr. Justice McGillivray:

ROYAL COMMISSION ON THE WORKMEN'S
COMPENSATION ACT

The Board of Trade of Metropolitan Toronto membership consists of more than twelve thousand persons representing large and small firms engaged in all phases of business activity and the professions. While this membership is concentrated mainly in the Toronto area, the larger member firms conduct businesses which in numerous cases are provincial in scope. In view of the nature of its membership, the Board believes that it can claim fairly to represent the views of a major cross section of the business and professional interests of the Province.

Appeal Procedure:

The Honourable Mr. H. L. Rowntree, Q.C., Minister of Labour, in a Workmen's Compensation Act debate before the Ontario Legislature last June, dealt with, among other things, the administrative appeal procedure respecting a claim for compensation by an injured workman. In this connection, he said that "The object of the Workmen's Compensation Board is to reduce and not increase the legalism of the decision-making machinery."* We agree whole-heartedly with this statement as it applies to a workman's claim,

* Ontario Hansard, June 20, 1966, p. 4952.

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in the belief that the processing of his claim should be as expeditious as may be in keeping with the trust inherent in the administration of the Workmen's Compensation Fund. On the other hand, there does not appear to be any sufficient reason for an avoidance of legalism in a contested assessment based on a dispute about classification of the employer. Honest differences of opinion do occur in this area and often involve a considerable amount of money because of the wide range of payroll rates under Schedule 1 of the Act. Where these disputes turn on a question of law or on a mixed question of law and fact, it is submitted that the employer should have a right of appeal to the courts.

The three levels of administrative appeal ensure that a workman's claim cannot be dealt with peremptorily without redress. It is essential, however, that there not be so many appeals that the appeal machinery becomes bogged down by sheer numbers. In an industrial province like Ontario such a possibility must be acknowledged. The recently introduced review committee before which there is no viva voce hearing will, it is hoped, avoid the problem of too many appeals. An impartial review by this committee of a claims officer's decision curtails the incidence of appeals without in any way derogating from the right of appeal with a hearing.

Objection is taken to the present practice of the Workmen's Compensation Board not being prepared to accept a transcript of evidence given before the appeal tribunal. Moreover, all of the evidence upon which the appeal tribunal based its decision should be known to the parties interested. In particular, medical reports should be published in full rather than by way of summary as they are now. It has been said that publication in full of a medical report prepared by the claimant's doctor would reduce their frankness and, if not reduced in frankness, render the doctor susceptible to a libel action. In our opinion, to accept the argument that medical reports would be reduced in frankness, is to confess a lack of confidence in the professional integrity of doctors. The Toronto Board of Trade does not admit any such lack. As to

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the argument that full publication of medical reports might render medical doctors susceptible to libel action, the answer would appear to be that these reports are published upon an occasion of qualified privilege; hence the likelihood of a successful libel action being remote unless there is malice. It may be, however, that consideration should be given to these reports being made absolutely privileged.

Definition of Accident:

There is considerable controversy over the extent of coverage there should be under the Fund. At one extreme, there are those who appear to argue that the definition of accident under the Act should be so construed that if disability occurs while at work, the disability is compensable. At the other extreme, it is argued that the definition means that the nature of the disability must be reasonably related to the nature of the work being performed. In our view, neither of these views is tenable. If a workman bends down to tie his shoelace and "slips a disc" he should no more be entitled to compensation than if the same disability happened for the same reason while he was at home. Similarly, a workman should be entitled to compensation if, while performing work, he suffers a disability even though the work being performed would not reasonably entail the risk of such a disability to the reasonably physically healthy person.

It is our view that a disability should only be compensable when at that point in time of the accident's occurrence the employee was carrying out his employee duties. There is, however, a real need to distinguish between an industrial accident and an illness that manifests itself on the job.

Waiting Period:

Three days which now constitute the waiting period is analogous to a "deductible" item in insurance policies. However, once the disability has continued for this length of time, compensation is payable from the time of disability. This retroactive feature lends force to the argument that there should be no waiting period since it creates the inequity of an employee receiving no compensation at all if his disability

falls short of expiry of the waiting period, whereas the employee whose disability only slightly exceeds the waiting period is paid compensation for all time lost.

Our view is that the elimination of a waiting period would inundate the Workmen's Compensation Board with claims and cause an increase in administrative costs as well as a substantial increase in the total of compensation payments. These increases would be occasioned for the insufficient reason of merely satisfying claims of a minor nature. We believe that the waiting period should be truly analogous to an insurance deductible, hence compensation should be payable only in respect of time lost after the waiting period has expired. This would reduce costs without causing undue hardship and remove the inequity referred to above.

The determination of when the three day waiting period falls in has created dissatisfaction in that any part of a day plus two days has been considered by the Workmen's Compensation Board to equal three days. Such addition may have its origin in the de minimus rule followed by the courts but it does not appear to accord with the ordinary meaning of what constitutes three days. We suggest that the waiting period be referred to as a certain number of hours. No one would quarrel with the de minimus rule being applied to a part of an hour.

Ideally the waiting period should be applicable only to time lost off the job. On the other hand, it is appreciated that to refer to the waiting period as "working days" brings into play the vexing question of what is a working day in a particular case. Perhaps this question could be handled satisfactorily by providing in the Act that the waiting period shall be working days (or hours) and in the regulations that the onus is on the employee to prove that a Saturday or Sunday is a working day and that the onus is on the employer to prove that any other day is not a working day.

Accident Reporting:

An accident should be reported promptly and whatever

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falls short of equity of the waiting period, whereas the employee whose disability only slightly exceeds the waiting period is paid compensation for all time lost.

Our view is that the elimination of a waiting period would inundate the Workmen's Compensation Board with claims and cause an increase in administrative costs as well as a substantial increase in the cost of compensation payments. These increases would be occasioned for the insufficient reason of merely satisfying claims of a minor nature. We believe that the waiting period should be truly analogous to an insurance deductible, hence compensation should be payable only in respect of time lost after the waiting period has expired. This would reduce costs without causing undue hardship and remove the inequity referred to above.

The determination of when the three day waiting period falls is has created dissatisfaction in that any part of the waiting period is counted as a whole day. We suggest that the waiting period be referred to as a certain number of hours. No one would quarrel with the de minimus rule being applied to a part of an hour.

Ideally the waiting period should be applicable only to time lost off the job. On the other hand, it is appreciated that to refer to the waiting period as "working days" brings into play the vexing question of what is a working day in a particular case. Perhaps this question could be handled satisfactorily by providing in the Act that the waiting period shall be working days (or hours) and in the regulations that the onus is on the employee to prove that a Saturday or Sunday is a working day and that the onus is on the employer to prove that any other day is not a working day.

Accident Reporting:

can be done to encourage prompt reporting should be done. However, it is not always clear-cut that an accident has happened. An inconsequential bump may be the effective cause of a bone disease that does not become apparent for months. That is why we would oppose a complete bar to a claim not submitted within a certain length of time. We agree with Subsection 5 of Section 21 which gives the Workmen's Compensation Board the power to remove the bar on claim for compensation imposed by Subsection 1 of that Section. Our hope, however, is that the staler a claim is the more skepticism there will be with which it is received.

Scale of Compensation:

Obviously 100% of earnings as compensation for disability would be too much since there is no income tax to pay on such compensation and there are no expenses to be incurred respecting transportation to and from work. Compensation should reasonably approximate earnings after tax; the present scale of 75% of gross earnings accomplishes this and, therefore, should not be increased.

Maximum Compensable Earnings:

Maximum compensable earnings have increased from \$2,000 per year to \$6,000 per year. We have no objection to these increases and we favour further increases if the value of the dollar continues to fall. We are opposed, however, to a reduction of the 12-month period previous to the accident which, under Section 40 of the Act, is required to be used in the determination of the workman's average weekly earnings. The 12-month period, we submit, represents an equitable basis to arrive at an average.

Increased Benefits - Past Injuries:

From time to time benefits have been increased and made applicable to the then recipients of benefits under the Act. No objection is made to these increases but their payment should not be a charge against Ontario's employers in business at the time of the increase. Many of these employers were not in business when the compensable accident took place.

We understand that the basic purpose of the Act

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is to require employers as a class to compensate their employees for injuries suffered during their employment. To assess those employers for increased benefits respecting employee accidents which occurred when they were not in business is contrary to this purpose. The cost of increased benefits should be assessed against the public generally not just the employer section of the public.

Accident Prevention:

The employer accident prevention associations, now operating under the control of the Workmen's Compensation Board, are to be commended for the work they have done. Our view is that they continue to be constituted exclusively of employers; to compel them to accept others as members would detract from their voluntary nature which attribute, we submit, is largely responsible for their effectiveness. Employers are now not only concerned with the costs of compensation. As well, they must pay heed to The Industrial Safety Act, S.O. 1964, c. 45, particularly S. 19 (3) and S. 22 (1), which are as follows:

19 (3): Every employer shall take such precautions as are reasonable in the circumstances to ensure the safety of every person in the industrial establishment.

22 (1): No person who has reasonable cause to believe that any machine, device or thing in or about an industrial establishment is unsafe or in contravention of this Act or the regulations shall . . . cause or permit it to be used or operated.

Employer accident prevention associations, we believe, greatly assist employers in carrying out these statutory duties.

We wish to thank you for this opportunity of acquainting you with our views respecting The Workmen's Compensation Act.

Respectfully submitted,

(Donald K. Tow)
President

(J. W. Wakelin)
General Manager.

